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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928

No. 306

CARSON PETROLEUM COMPANY, PETITIONER,

vs.

LEON C. VIAL, SHERIFF AND TAX COLLECTOR OF THE PARISH OF ST. CHARLES; R. A. DE BROCA, ASSESSOR FOR THE PARISH OF ST. CHARLES, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

WRIT OF ERROR AND APPEAL DISMISSED OCTOBER 15, 1928

BRIEF IN SUPPORT OF APPLICATION FOR CERTIORARI FILED OCTOBER 29, 1928

CERTIORARI GRANTED NOVEMBER 26, 1928

(33,615)

(33,615)

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IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

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IN DISTRICT COURT OF ST. CHARLES PARISH, TWENTY-EIGHTH JUDICIAL DISTRICT

No. 1281, Docket No. 3

CARSON PETROLEUM COMPANY

vs.

LEON C. VIAL, Sheriff, et als.

PETITION FOR A WRIT OF INJUNCTION—Filed May 10, 1924

To the Honorable the Judges of the Twenty-eighth Judicial District, Parish of St. Charles:

The petition of the Carson Petroleum Company, a Corporation organized under the laws of the State of Delaware, with respect represents:

I

Your petitioner is engaged in the business of handling oils, and more particularly selling, exporting and otherwise distributing same.

II

That neither the Port Authorities of the Port of New Orleans or of the Parish of St. Charles, nor the various Ocean Carriers therein, provide the requisites and necessary facilities for the assembling and accumulation of cargoes of oils for export.

III

That thereupon the Petroleum Import & Export Corporation, Incorporated, a Louisiana Corporation, has established and constructed the necessary tanks and other equipment and facilities for the assembling, loading and discharging of cargoes of oils for export, on the property owned by it on the river front at St. Rose, Parish of St. Charles, State of Louisiana.

IV

That due to the nature and character of the commodity and the railroad facilities available, the assembling of a cargo of oils requires from sixty to ninety days.

V

That all of said oils so assembled for export by your petitioner has been sold by your petitioner to foreign pur-
[fol. 2] chasers before the arrival of same at St. Rose.

VI

That your petitioner has contracts for deliveries of oils covering a period varying from one to seven years with Companies in France, Australia and China, said shipments to be made as near as practicable in equal monthly quantities. That the oil which is exported to the respective countries is shipped by rail from the various states of the Union in tank cars to St. Rose, Parish of St. Charles, State of Louisiana, and there assembled in tanks to await the arrival of the ship in order that it could be pumped into the said ship. That these containers are mere facilities furnished for the purpose of carrying on the business of exportation of oils.

VII

Petitioner avers that not only are its oils intended for export, but are actually sold to buyers residing in foreign countries before the arrival of the oils at St. Rose, Louisiana, and are delivered to the facilities of the Petroleum Import & Export Corporation, Incorporated, in the absence of proper facilities furnished by the ocean carriers, for shipment within a reasonable time and not for storage or warehousing purposes, and therefore are actually and continually in transit.

VIII

Petitioner further avers that the Louisiana Tax Commission and the Assessor for the Parish of St. Charles after having placed an assessment upon all of the instrumentalities and the facilities furnished for the purpose of shipping oil by the Petroleum Import & Export Corporation, Incor-

porated, have likewise placed an assessment on the oil in transit or said to be on hand in the companies' tanks, in the following language: Carson Petroleum Company, a Delaware Corporation, Merchandise at St. Rose, Oil, $200,000.

IX

Petitioner avers that it has refused to pay the tax based on the assessment of $200,000.00 for the reason that the oils [fol. 3] so taxed are in transit from other states of the Union to foreign countries and that said tax is therefore a tax and burden on interstate and foreign commerce.

X

That this is an assessment on property actually in transit and is repugnant to the provisions of Article I, Section 8, clause 3; Article 1, Section 9, clause 5; Article 1, Section 10, clause 2 of the Constitution of the United States and the laws of the State of Louisiana.

XI

Petitioner avers that the assessment of $200,000.00 on these oils is null and void and should be stricken from the assessment rolls, and that the Assessor of the Parish of St. Charles and the Louisiana Tax Commission should be made a party to these proceedings.

XII

Petitioner further avers that protest was made in accordance with law to the proper authorities as to this assessment, but to no avail.

XIII

Petitioner further avers that it has been served with a notice for the payment of this tax on said illegal assessment amounting to the sum of $3,885.05, and that Leon C. Vial, Sheriff and ex-officio Tax Collector for the Parish of St. Charles, will seize and sell its oils within the Parish of St. Charles for the payment of said tax, unless restrained and prohibited from so doing by this Honorable Court.

XIX

Petitioner further avers that it has no adequate remedy at law save a Writ of Injunction.

Wherefore, the accompanying affidavit being considered and upon security to be furnished in the amount with the sureties and with the conditions required by law, petitioner prays that a preliminary Writ of Injunction issue [fol. 4] herein restraining and prohibiting Leon C. Vial, Sheriff and Tax Collector of the Parish of St. Charles, and R. A. DeBroca, Assessor for the Parish of St. Charles, and the Louisiana Tax Commission, through its proper officer, from laying and levying against it the said illegal assessment, and restraining and prohibiting the said Leon C. Vial, Sheriff and Tax Collector for the Parish of St. Charles, from advertising, seizing or attempting to sell petitioner's property in his effort to collect said illegal tax. That said assessment and said tax be declared illegal, null and void; that the defendants be duly cited to appear and answer this petition, and that after due proceedings had there be judgment in favor of your petitioner and against said defendants declaring said assessment illegal, null and void and perpetuating the said Writ of Injunction, and for all costs and general relief.

(Signed) Moise & Hammond, Attorneys for Petitioner.

Affidavit

Before me the undersigned authority personally came and appeared J. V. Coone, who being duly sworn, deposes and says:

That he is Treasurer, of the Carson Petroleum Company; that said Company is the petitioner named in the foregoing petition, and that all the allegations of facts contained herein are true and correct, and that a Writ of Injunction is necessary to protect said Company in the premises.

(Signed) J. V. Koon.

Sworn to and subscribed before me this 10th day of April, 1924 at Chicago, Illinois. (Signed) John K. Murphy, Notary Public.

Order

Let a Rule Nisi issue herein and let defendants be and they are hereby ordered to show cause on the 29th day of May 1924, at 10 o'clock, why a preliminary Writ of Injunction should not issue in this cause as prayed for and according to law.

Parish of St. Charles, May 15th, 1924.

(Signed) Prentice E. Edrington, Judge.

Service Accepted. Harry P. Sneed, Counsel for Defts.

Service accepted 5/10/24. (Signed) Leon C. Vial, Sheriff.

[fols. 5 & 6] In District Court of St. Charles Parish

[Title omitted]

Order for Injunction—Filed June 17, 1924

Let preliminary injunction issue herein upon plaintiff furnishing bond according to law in the sum of Six thousand ($6,000.00) Dollars.

Parish of St. John the Baptiste, La., June 16th, 1924.

(Signed) Prentice E. Edrington, Judge.

No Objections of preliminary injunction. (Signed) Harry P. Sneed, Atty. for Deft.

Service accepted June 17/24. (Signed) Leon C. Vial, Sheriff.

[File endorsement omitted.]

[fol. 7] In District Court of St. Charles Parish

[Title omitted]

Answer—Filed Dec. 7, 1926

To the Honorables the Judges of the Twenty-fourth Judicial District Court, Parish of St. Charles, State of Louisiana:

Now comes, Leon C. Vial, Sheriff and Tax Collector for the Parish of St. Charles, State of Louisiana, R. A. Dubroca, the Assessor for the Parish, and the Louisiana Tax Commission, herein made defendants, and to the petition herein filed, answering say:

I

They admit the allegations of paragraph 1.

II

They are without sufficient information to enable them to admit or deny the allegations contained in paragraph 2 of said petition, they, consequently, deny same pro forma, and call for such proof as this Honorable Court may deem to be relevant to the issue herein.

III

The allegations of paragraph 3 are admitted.

IV

That your petitioners of their own knowledge are unable to admit or deny the allegations contained in paragraphs 4, 5, 6, and 7, of plaintiff's petition, except that they deny that the containers employed by plaintiff are mere facilities furnished for the purpose of carrying on the business of exportation of oil.

V

On information and belief they charge that the establishment of plaintiff company in the Parish of St. Rose is a storage place, or entreport, where oils are collected for the convenience and profit of the said plaintiff, and that the oil herein assessed is oil held in storage at said point.

[fol. 8]

VI

The allegations of paragraph 7 are denied.

VII

The allegations of paragraph 8 are admitted, except that it is denied that the oil on which an assessment has been levied is oil in transit.

VIII

Defendants admit a refusal of plaintiff to pay the tax assessed against it, but denies that the reason for such refusal by the plaintiff is valid.

IX

The allegations of paragraph 10 are denies.

X

The allegations of paragraph 11 are denied.

XI

The allegations of paragraph 12 are admitted.

XII

The allegations of paragraph 13 are admitted.

Wherefore, defendants pray that the preliminary injunction issued herein be racalled; that there be judgment dismissing plaintiff's suit, and ordering plaintiff to pay, in addition to the taxes and penalties herein involved, an attorney's fee of ten (10%) per cent. on the said taxes and penalties, as provided by law.

And for all costs and general relief.

(Signed) C. S. Lagarde, Frymire & Ramos, Harry P. Sneed, Attorneys for Defendants.

Duly sworn to by Leon C. Vial. Jurat omitted in printing.

[fol. 9] [File endorsement omitted.]

[fol. 10] [File endorsement omitted]

IN DISTRICT COURT OF ST. CHARLES PARISH

[Title omitted]

STATEMENT OF EVIDENCE—Filed Jan. 18, 1927

Appearing for the plaintiff, Harold A. Moise and John K. Murphy.

Appearing for the defendant, Harry Sneed, Frymore Ramos and Mr. Lagarde.

Honorable Robert Rivarde presiding.

TESTIMONY AND NOTES OF EVIDENCE FOR THE PLAINTIFF

Mr. H. E. BRANDLI, being first duly sworn for the plaintiff, answered the following questions from Mr. Murphy, direct examiner:

Q. Would you state your name to the Court?
A. H. E. Brandli.
Q. And your address, Mr. Brandli?
A. Chicago, Ill.
Q. I will now ask whether you are in any way connected with the Carson Petroleum Company?
A. Yes, I am Vice President and General Manager.
Q. How long have you been connected with the Carson Petroleum Company in that capacity?
A. Five years.
Q. What is the business of the Carson Petroleum Company?
A. Buying gasoline, kerosene and various petroleum products for shipment for export.
Q. Is the Carson Petroleum Company incorporated do you know, and in what State?
A. Yes they are, in the State of Delaware.
Q. I will ask if you know where the Petroleum Import & Export Corporation is located; to be more specific, in what State and town?
A. Yes, the Petroleum Import & Export Corporation is located in St. Rose, Parish of St. Charles, La.
Q. Now do you know whether the State of Louisiana, or the Port Authorities of New Orleans, or the Police Jury of the Parish of St. Charles, have provided the requisite and necessary facilities for the assembling and accumulation of cargoes of oils for export?
A. No, they have made no such provision.
[fol. 11] Q. Do you know whether the Petroleum Import & Export Corporation has established and constructed on the Mississippi River front at St. Rose, Parish of St. Charles, State of Louisiana, the necessary tanks and other equipment and facilities for assembling, loading and discharging of cargoes of oils for export?
A. Yes, the plant was built for that purpose.
Q. Do you know, Mr. Brandli, from your experience and your association with this exporting business, do you know

what period of time it takes to assemble a cargo of gasoline, kerosene or petroleum for export?

A. From forty-five to ninety days.

Q. Will you state to his Honor just exactly the routine of assembling a cargo of gasoline before it is delivered to the loading depot on river front?

A. Yes, first we secure orders for export shipments, then after securing the orders we purchase from the various refiners in the Mid-Continent Field, which comprises mostly the States of Kansas, Oklahoma and Texas where the various refiners are located. We buy this material, gasoline or kerosene and petroleum products from these refiners, ship it in tank cars to our plant at St. Rose, La., where the necessary amount is accumulated, a vessel taking from two million to three million gallons, and as soon as the material is accumulated and boats are available, the material is shipped for export.

Q. Is the shipment from the Field to the Boat ever in any way delayed or held up?

A. Oh yes, quite often it is delayed and often times some delay is experienced in getting material from the refiners. They do not always have the material on hand and cannot ship immediately and we often have to wait until they manufacture sufficient material.

Q. Is the contents of a cargo frequently purchased from a number of different refiners?

A. Yes, we purchase from practically all of the refiners in the Mid-Continent Field.

Q. Then as I understand, some is purchased in Kansas, Texas and Oklahoma, collecting it as quickly as you can; now what is the route of transporting or conveying same or does it come in different tanks to St. Rose?

A. It comes from various points in these three States and, of course, over railroad shipment in common carriers and tank cars. There is always some delay in transit and there are times in loading a vessel when we have to hold the vessel at our docks until the material actually arrives. During these times, of course, we are very much concerned as there is demurrage on boats of from $1,500.00 to $2,000.00 per day and naturally we make every effort to avoid any demurrage on this account and rush the refiners all possible.

Q. Will you state to his Honor how many tank cars of gasoline go to make up a cargo?

A. From three to five hundred for one cargo.

Q. Do you know how many cars are shipped to an ordinary freight train?

A. Twenty-five would be the minimum, I would say thirty cars.

[fol. 12] Q. Do you make it a point to get these train loads of tank cars down to the loading depot before your boat gets in?

A. Oh yes, we sell, for instance, a cargo taking three million gallons, while we may buy this material from say ten different refiners, say quarter of a million from one, half million from another, one hundred thousand gallons from another and so on, we buy same for shipment over a certain period and as fast as the refiners can ship. However, we have to provide for a ten per cent leeway on all cargoes.

Q. Please state exactly what you mean by lee-way.

A. Cargoes are generally sold with a ten per cent leeway. If you sell a two million gallon cargo with a ten per cent leeway, this gives the ship a leeway in loading the vessel. That means that the buyer can take either ten per cent more or ten per cent less than two million gallons, or he has a leeway of 400,000 gallons on a two million gallon cargo.

Q. These cargoes, without exception, are sold by you and purchased by foreign buyers before you order any material?

A. Yes, we have contracts for shipment over a year's period, six months period, or different periods. We buy and ship against these contracts. Just within the past ten days we have closed a contract for thirteen million gallons of material for shipment over the next six months for loading on certain vessels. Oft times a vessel loads and goes over and comes back and loads again.

Q. Will you state to his Honor the usual proviso as to the time of loading a vessel?

A. Cargoes are sold for loading within a given period. For instance, right now we would book a cargo for January or February loading, which means we would be required to load that cargo either tomorrow or the end of February. The buyer has leeway over a certain period. Whenever his

boat arrives at our plant we have to be ready to load. The boat is sometimes delayed by storms and other unforeseen conditions and as a result they have leeway over a certain period.

Q. Without exception or reservation, have you ever purchased any petroleum products, gasoline or oil of any description and shipped it to St. Rose before it was sold to some foreign shipper?

A. No, we always have contracts ahead, contracts which would more than cover any material we have on hand. On the contrary, we are generally oversold. Our plant is more or less always short of material.

Q. Do you ever have to hold up vessels or boats because of a lack of oil or gasoline at the plant?

A. Yes, that quite often occurs. We try to avoid that condition, but refiners like all other shippers are oft times delayed in making deliveries. We have placed orders with certain refiners and certain conditions arise and they cannot ship the material and we in turn have to wire another refiner to fill our shipment and so buy a rush shipment from another refiner.

Q. In the years of 1923, 1924, 1925 and this past year what was the status of all petroleum products, gasoline and kerosene at the St. Rose plant of the Petroleum Import & [fol. 13] Export Corporation, what was it there for?

A. For export contracts.

Q. What exact state was it in.

A. It was material in transit for export. It was sold and being accumulated at the plant.

(This question was objected to by Mr. Sneed.)

Q. Did you ever do anything, or the Carson Petroleum Company do anything to retard shipment abroad?

A. No.

Q. Will you state to his Honor the occasion for any delay, or any temporary stoppage at the loading tanks at St. Rose.

A. The only delay we ever have is due to the delay in the arrival of a vessel or due to a delay in the arrival of material at St. Rose for the vessel.

Q. Was there ever any material shipped to the Carson Petroleum Company for any storage at St. Rose?

A. No.

Q. Of any kind, petroleum, gasoline or oil?

A. None.

Q. Do you know what the facilities and equipment at St. Rose are primarily?

A. The plant was built and the equipment was provided for the accumulation of gasoline, kerosene and various petroleum products for export shipment.

Q. Mr. Brandli, did the Carson Petroleum Company in 1923, 1924, or 1926 ever sell, or did it ever ship, any of the petroleum products located in your tanks at the St. Rose plant, within the State of Louisiana for domestic trade?

A. No.

Q. Did it ever?

A. No, we never have.

Q. Did you ever sell any petroleum products of any kind or description in the State of Louisiana at any time for domestic use?

A. No.

Q. Is there any petroleum products, or has there ever been any petroleum products, accumulated by the Carson Petroleum Company for any warehouse purposes at St. Rose?

A. No, for no storage purposes.

Q. Was there ever any delay in shipments because of or on account of Carson Petroleum Company other than the delay in the arrival of ocean carriers as you state?

A. No.

Q. Do you know of your own knowledge whether the Louisiana Tax Commission or the Assessors of the Parish of St. Charles placed an assessment on the equipment furnished for the purpose of shipping oil by the Petroleum [fol. 14] Import & Export Corporation?

A. Yes.

Q. Have you got the tax receipts with you for the past several years?

A. Yes, we have.

(Produced tax receipts to Judge.)

Q. Mr. Brandli, will you state to his Honor whether the gasoline that you ship to St. Rose, La., to the plant of the

Petroleum Import & Export Corp'n. is what is known as domestic gasoline, or state to his Honor fully what the quality of it is

A. No, the gasoline shipped to St. Rose for export shipment is familiarly called export gasoline. It is a much better grade of gasoline than is used in this country for domestic consumption. In other words, the foreign buyers use a much better grade of gasoline in their cars than we do in this country. The gasoline used in this country for cars is generally 58/60 Navy gasoline, 58/60 in gravity, and Navy gasoline is U. S. Navy specifications, in recent years called U. S. Motor specifications. The greater portion of gasoline exported is a better grade of gasoline, 64/66 in gravity with a 375 end point, as compared to Navy gasoline with a 437 end point. This 64/66 gasoline with a 375 end point is really to gasoline what cream is to milk. It has a very high gravity and low end point, the lower the end point the better the gasoline and nearly all of the foreign buyers, France, England, etc., use this better grade because their cars will not operate satisfactorily on the low grade of gasoline as our cars will in this country, difference in the type of cars. We export some Navy gasoline as is used in this country, but very little.

Cross-examination by Mr. Harry Sneed, attorney for defendant:

Q. Mr. Brandli, is there any difference in your method of doing business at the time this assessment was made and the present time.

A. No.

Q. You say you are buying oils in tank cars in the Mid-Continent Field wherever you can and routing them all to St. Rose and emptying the contents into your tanks awaiting the arrival of ships?

A. Yes, sir.

Q. To whom are these tank cars consigned?

A. To the Petroleum Import & Export Corporation.

Q. Is that a subsidiary of the Carson Petroleum Company?

A. It is.

Q. In whose name is the title of the oil?

(Question objected to by Mr. Murphy.)

A. Carson Petroleum Company.

[fol. 15] Q. Does any of this oil pass through St. Rose on a through bill of lading to a foreign carrier?

A. No, it does not.

Q. Then the Carson Petroleum Company are owners of this material from the time it leaves the field until it is loaded on a foreign carrier.

A. Well, I will say this that all of the material purchased is billed by the railroad on an export rate, which takes a lower rate than the domestic rate into St. Rose. It arrives under our shipping instructions given the railroad to be shipped for export.

Q. The bill of lading simply reads from point where the tank cars are loaded to your plant at St. Rose for export?

A. Yes, otherwise it would take the domestic rate.

Q. These tank cars are brought to St. Rose and emptied until you accumulate enough to make shipment abroad. In other words, you accumulated petroleum products, purchased wherever you can buy most profitably, bring to St. Rose and accumulate until you can dispose of by shipping abroad?

A. No, we cannot wait and accumulate it, if we sell a cargo today, we buy against this sale or against this cargo and we buy the material in time to arrive at St. Rose for that specific shipment. In other words, we have to have it there in time. If we sell a cargo now for March shipment, we buy the material now to have it in time for this shipment.

Q. I believe I understood you to say that you were generally oversold and always busy accumulating material?

A. Yes, sir.

Q. Now, Mr. Brandli, does any of this material pass thru St. Rose on a thru bill of lading from points where the tank cars are loaded to its destination abroad?

A. None at all.

Q. Does the Carson Petroleum Company carry insurance on that oil at St. Rose?

A. Yes, sir.

Q. To whom is the loss payable in the event of destruction?

A. The Carson Petroleum Company.

Q. Then it is the Carson Petroleum Company's petroleum and petroleum products until it actually starts abroad on its foreign journey?

A. Yes, sir.

Q. Then, Mr. Brandli, what is the difference between this plant at St. Rose and other similar plants where goods are accumulated with the intention of the owner to ship?

A. I do not get you.

Q. To explain this, I will have to go a little bit further. Here is the purpose: the courts have decided, or it is my con-ention that the courts will decide, that when a gathering point is operated for the purpose of accumulating goods which are intended to be exported, that those goods are not [fol. 16] relieved from local taxation. Now can you state what there is in the business operations of the Carson Petroleum Company at St. Rose to distinguish them from any other concern which accumulates goods with the ultimate intention of exporting them?

A. Just as you contend, the Mid-Continent Refiners have recently tried to organize an Export Company whereby they would accumulate material during a certain period and when the price got down to where they did not want to sell to domestic users, they would export it and when prices got better would dispose of it for domestic use. Now that would be partly a warehouse company proposition whereby they would accumulate material and ship it when prices got right. We, ourselves, do not do this; we contract with our foreign buyers for material and have boats designated to lift this material and we ship the material immediately on arrival of these boats. We ship up to fifty tankers a year and our material is really in transit all the way thru. It is bought and just as soon as the boat arrives it is loaded on, while they are now trying to organize a Company to accumulate material to sell when prices are right.

Q. Has there ever been any particular tank car pass thru St. Rose on a thru bill of lading for the consumer?

A. I cannot say 100% on that, because we may have shipped on a thru bill of lading, but I do not think we ever have.

Q. Then it is not the custom of the Company?

A. No.

(Mr. Murphy spoke: You could not do it, it could not be done. You Mr. Sneed represent the Sinclair Refining Company and know that it would be impossible to do such a thing, that is to ship from the Mid-Continent Field to Europe.)

A. I believe there is a possibility that this could be done, but I think it would be a very stupendous method and it has never been done in the history of the United States to my knowledge. If you shipped into Mexico this could very easily be done as no unloading or reloading would be necessary.

Q. The whole situation at St. Rose is that this is an assembling point where you assemble the oil which you ultimately intend to ship as soon as you can get a boat to ship it in; the title of the oil is in the name of the Carson Petroleum Company when it reaches St. Rose; insurance is carried in the name of the Carson Petroleum Company, to whom loss is payable in the event of destruction, and it is therefore the property of the Carson Petroleum Company until a vessel arrives and charter and bill of lading is made out to some foreign concern?

A. The material is released by us and bill of lading signed by the Captain of the vessel.

Q. When commonly speaking about merely assembling material, may I call your attention to the fact as to the intent purpose of the plant and inquire whether ordinary tanks would be fitting or adequate for the purpose of unloading and loading to the boats?

A. Well, while ordinary tanks would, of course, hold the material, I refer to tanks with a cone top as ordinary tanks, such as they use in the fields where they accumulate raw [fol. 17] material and crude petroleum our tanks or rather the majority of them, are water top tanks with 6" of water on top to avoid evaporation losses. As I said before this 64/66 material is very light material and the evaporation losses are quite heavy and we do everything we can to avoid evaporation and this water top tank avoids excessive heat.

Q. Mr. Brandli, the facilities afforded by the Petroleum Import & Export Corporation are for the protection also for the accumulation and conservation of petroleum products as they are loaded into ships, so that it is not merely an assembling plant, but it is a necessary accommodation

in loading foreign merchandise. In other words, you could not hold a boat without demurrage while you were accumulating a cargo, and, therefore, you would have to call it an assembling plant. There is no process of loading 400 or 500 tank cars on to a boat without having some unloading or pumping facilities, is that right?

A. Yes, cars could be shipped down to the plant, say 400 cars of gasoline could be shipped down here and you could pump from tank cars right to the vessel, but everything would have to work 100% with the refiners, 100% with the railroads and our plant would have to be able to accommodate 400 cars on our tracks. In that event you would have demurrage on the cars and demurrage on the vessel, but it could be done. However, the evaporation and additional expense would be enormous.

Q. Is there any appreciable difference in the temporary waiting for a ship in the unloading into these preserving tanks?

A. Do you mean as to evaporation loss?

Q. Yes, is there any appreciable difference in time material stands temporarily should it not work out so that your tank car shipments meet your tankers?

A. Yes, the evaporation is greater, but we have to have them there ahead of time because you cannot judge the exact arrival date of vessels and our foreign buyers charter tankers for loading anytime within thirty or forty-five days. For instance if we sell a cargo for February, we say February or March lifting, then they can load the material anytime from the first of February to the last day of March.

Q. Mr. Brandli, you have stated to his Honor that every gallon shipped by the Carson Petroleum Company to the plant at St. Rose is intended for export and practically in transit to vessels, now then will you state to his Honor whether or not it is a fact that all of the merchandise and petroleum products you have referred to were actually and immediately shipped for export over seas?

A. Yes.

Q. Was there ever any storage of any kind or any stoppage of any material shipped to St. Rose?

A. Not unless a boat was not available, having been delayed in some way.

Q. So that any delay or standing of any quantity of gasoline whatever was due solely to the waiting for a boat.

A. Yes sir.

[fol. 18] Q. Will you state to his Honor the foreign countries that you shipped to in 1923, 1924, 1925 and 1926 under contracts?

A. During that period we shipped cargoes to nearly all the foreign countries, France, England, Belgium, Spain, China, Japan, Australia and South America.

Q. Have you here in court available for his Honor the cargoes shipped in 1923, 1924, 1925 and 1926.

A. We have copies of the orders, or our instructions to St. Rose to load for export shipment.

Q. As a matter of fact then during the process of accumulation that oil is in tanks at St. Rose?

A. Yes sir.

(Mr. Moise, attorney for plaintiff:)

Q. Regarding this oil which you receive as you say from the various States, after it reaches St. Rose for export, do you make any change whatever in the character of your produce?

A. No, it is shipped as received.

Q. Now the method which you pursue in the exportation of oil, is naturally limited by the available facilities for shipment which you have.

A. Yes.

Q. The method which you pursue in the shipment of oil, it being in liquid form, is the method which in the judgment of your Company promotes the safety of the oil in transit?

A. Yes sir.

By Mr. Murphy:

Q. On purchasing material for export on foreign orders, when you purchase the required quantities in Kansas, Oklahoma and Texas and it is turned over to a common carrier at those points, do you make a habit of notifying your foreign customers that the merchandise is en route?

(Question objected to by Mr. Sneed and withdrawn by Mr. Murphy.)

Second witness, Mr. M. K. THOMEN, was tendered by the plaintiff as a witness, thereupon the defendant made the following admission:

It is admitted that the present witness both on direct and cross-examination will testify in the same manner as did the preceding witness, Mr. H. E. Brandli, and therefore will not be asked to testify.

Thereafter the witness was duly sworn by the Minute Clerk and answered the following question, asked by Mr. Murphy:

Q. Mr. Thomen was there ever any delay upon the arrival of tank cars containing gasoline and petroleum products after arriving at St. Rose until they were placed aboard tankers as cargoes to foreign purchasers?

A. No, never.

[fol. 19] Assessment-roll for the Parish of St. Charles, 1923

Page 85.
Wards 3 and 5 Non-residents.

No. of assessment	Name and address of taxpayer	Description of property	Actual value of all other property as fixed by the La. Tax Comsion for all assessment purposes	Total assessed value of all of the foregoing property for State purposes at 100% actual value
141.....	Carson Petroleum Co., of Delaware, 208 La Salle St., Chicago.....	Mdse. at St. Rose (Oil).....	$200,000.00	$200,000.00

Total assessed value of all of the foregoing property for local purposes at —% actual value	Total State tax, 5½ mills	Parish tax, 4 mills	Levee, 5½ mills	School, 8	School, 1	School, 1½	Road, 1	Total
$170,000.00	$1,050.00	$680.00	$1,050	$510	170	$255.00	170	$3,885.00

I hereby certify the above to be a true and correct copy from assessment roll on file in my office showing assessment of the Carson Petroleum Corporation for the year 1923.

Parish of St. Charles, Jan. 4th, 1927.

I. F. Baudouin, Clerk of Court and Recorder. (Seal of the Clerk of the Parish of St. Charles, Louisiana.)

[fols. 20-24] In District Court of St. Charles Parish

[Title omitted]

Judgment—Filed Jan. 18, 1927

In this case the law and the evidence being so clearly in favor of the Plaintiff and against the defendants:

It is ordered, adjudged and decreed that the assessment and taxes levied and sought to be collected by the defendants herein, be and the same is hereby declared to be illegal, null and void, and

It is further ordered, adjudged and decreed, that the preliminary injunction heretofore issued in this case on the 16th day of June, 1924, be and the same is hereby made perpetual and accordingly the Tax Assessor of the Parish of St. Charles, and the Louisiana Tax Commission of the State of Louisiana, and the Sheriff of the Parish of St. Charles, be and they are hereby prohibited, restrained and enjoined from levying any tax upon the property of plaintiff or from advertising, seizing, selling or attempting to sell any of the property belonging to the plaintiff herein.

Judgment rendered, read and signed in open court of this 18th day of January, 1927.

(Signed) L. Robert Rivarde, Judge.

[File endorsement omitted.]

[fol. 25] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 26] In Supreme Court of Louisiana

His Honor, the Chief Justice, pronounced the opinion and judgment of the Court in the following cases:

No. 28543

Carson Petroleum Company

vs.

Leon C. Vial, Tax Collector, et al.

Final Judgment—May 7, 1928.

The judgment appealed from is annulled; the writ of injunction which was issued herein is dissolved; the plain-

tiff's demand is rejected and its suit is dismissed at its cost, and it is ordered, adjudged and decreed that the tax collector shall collect from the plaintiff, Carson Petroleum Company, as part of the costs hereof, the tax collector's attorney's fee of ten per cent. on the aggregate amount of the taxes which he was sought to be restrained from collecting, and the penalties imposed by law.

[fol. 27] IN SUPREME COURT OF LOUISIANA

[Title omitted]

OPINION—May 7, 1928

O'NIELL, C. J.:

This is an action to abate the levying of taxes on a quantity of oil in a storage tank at St. Rose, in the Parish of St. Charles, Louisiana. The taxes complained of are the ad valorem taxes levied by the state and the parish, generally, on all property subject to such taxation. There is no charge of discrimination against the property of the defendant in that respect. The property assessed was a quantity of oil belonging to the plaintiff, in storage tanks belonging to the Petroleum Import & Export Corporation, near the Mississippi River, being the estimated average quantity of oil on hand, and was assessed at $200,000. It was not charged in the plaintiff's petition that the estimate of either the quantity or the value of the oil assessed was excessive. The only complaint was that the taxing of the oil was deemed an interference with interstate and foreign commerce, and therefore violative of the 3rd clause of the 8th section and the 5th clause of the 9th section and the 2nd clause of the 10th section of Article I of the Constitution of the United States. The district court gave judgment in favor of the plaintiff, annulling the assessment and abating the tax, on the ground that the oil which was assessed was in transit, or on its way, from another state to a foreign country, and was halted only temporarily at St. Rose, and had not a situs in the Parish of St. Charles or State of Louisiana. [fol. 28] The defendants, who are the tax collector, the assessor, and the Louisiana Tax Commission, have appealed from the decision.

There is no dispute about the facts of the case, so far as they are pertinent to the question at issue. The plaintiff, Carson Petroleum Company, is a Delaware corporation, engaged in buying and selling oils, and particularly in exporting the same. The Petroleum Import & Export Corporation is a subsidiary of the Carson Petroleum Company, and owns and operates the system of tanks and pumping equipment for receiving the contents of the railroad tank cars of oil into the tanks owned by the Petroleum Import & Export Corporation and afterwards loading it into ships for export. The Port of New Orleans has no facility or equipment for assembling or receiving from railroad tank cars cargo-s of oil and loading it aboard ships for export. The tanks and equipment at St. Rose, a few miles above New Orleans, were constructed for that purpose. No oil is sold at St. Rose except what is exported. The only business conducted there is the unloading of oil from railroad tank cars into the storage tanks and the loading of the oil from the storage tanks aboard the tankers for shipment to England, France, and other foreign ports. The oil is bought by the Carson Petroleum Company from the refiners in the Mid-Continent Field, comprising Kansas, Oklahoma and Texas, and is shipped to St. Rose, Louisiana, in railroad tank cars consigned to the Carson Petroleum Company. The shipments are not on through bills of lading, but on an export rate, which is lower than the domestic rate. The oil is a higher grade of gasoline than is used in this country generally, and is made especially for export, because the automobiles in England, France, and other foreign countries require a higher grade of gasoline than that which is used in this country. The Carson Petroleum Company takes orders for cargo-s of oil from the foreign buyers, who charter the vessels to transport the oil from St. Rose to the foreign ports. The company always has orders on hand in excess of the quantity of oil at St. Rose, and buys the oil in the Mid-Continent [fol. 29] Field for the purpose of filling orders already received from the foreign buyers. The oil in each railroad tank car, however, is not segregated or assigned or destined to any particular cargo or shipment abroad, but is pumped into the large storage tanks, having the capacity of many tank cars, and is held in the tanks until a ship arrives, or

until a sufficient quantity of oil is accumulated to make up a cargo. A ship carries from two to three million gallons; hence it takes 300 to 500 railroad tank cars, or 10 to 16 trains of tank cars, to make up a cargo of oil. The buyers are allowed a ten per cent leeway on the quantity of oil bought for each shipment; which, as we understand, means that, if the capacity of the ship is either more or less than the quantity of oil contracted for, the buyers can demand a delivery of the ships capacity, at the contract price of 'the oil per gallon, provided the quantity shall be not more than ten per cent above or below the quantity contracted for. A delivery of the oil thus sold is made by loading the oil aboard the ship chartered by the buyer. Until the oil is thus loaded aboard a ship it belongs to the Carson Petroleum Company and is insured in the name of the company, loss payable to the company. There are times when an accumulation of oil in the tanks is awaiting the arrival of a ship, and at other times a ship is awaiting the accumulation of a sufficient quantity of oil to make up a cargo. In order to save demurrage on ships, which amounts to $1,500 or $2,000 per day on a ship, the Carson Company endeavors to have a sufficient quantity of oil on hand at St. Rose to fill each order promptly on arrival of the ship. On account of the demurrage charges on tank cars, as well as on steamships, it would be impracticable to carry on the export oil business by any other method than by storing the oil in large storage tanks as the train loads of oil arrive, and shipping from the accumulation when the ships arrive. The oil is shipped from the storage tanks in the same condition in which it was received from the tank cars, without being treated in any way. The oil is never kept [fol. 30] on hand at St. Rose any longer than is necessary. The quantity on hand is always awaiting either the arrival of a ship or the accumulation of a sufficient quantity to load a ship.

The plaintiff, appellee, contends that the interstate and foreign shipment of the oil, from the refineries in the Mid-Continent Field, into and across the State of Louisiana, and across the sea to the foreign ports, is a continuous interstate and foreign shipment, notwithstanding the stoppage and storage of the oil at St. Rose, where it had to await either the arrival of a ship or the accumulation of

a sufficient quantity of oil to load a ship. The defendants appellants, contend that there are two separate shipments of the oil,—the interstate shipment, which ends when the tank cars arrive and are unloaded at St. Rose, and the foreign shipment, which begins when the oil is loaded aboard a ship destined for a foreign port. Hence the defendants, appellants, contend that, while the oil is stored in the tanks at St. Rose, under the protection of the state and local government, it is subject to state and local taxation, notwithstanding it is intended and prepared for exportation.

The interstate and foreign commerce clause of the Federal Constitution does not exempt movable property from state or local taxation, if it is not discriminative, unless the property is in actual transit in interstate or foreign commerce; and the question of continuity of transit which will exempt property moving in interstate or foreign commerce, from state or local taxation, is to be determined by the various factors in the situation, among which are the intention of the owner, the control which he retains to change the destination, the agency or agencies by which the transit is affected, and the cause or occasion or purpose of the interruption during which the property is assessed for state or local taxation. Champlain Realty Co. v. Brattleboro, 260 U. S. 366, 43 Sup. Ct. Rep. 146, 67 L. Ed. 309, 25 A. L. R. 1195.

The mere intention of the owner to export the property, even when coupled with a preliminary shipment in prepara- [fol. 31] tion for exportation, does not constitute the beginning of an interstate or foreign shipment. To exempt the property from state or local taxation, it must have been shipped, or entered with a carrier for shipment, to another state or a foreign country, or started on a continuous route or journey beyond the state. Cone v. Errol, 116 U. S. 517, 29 L. Ed. 715, 6 Sup. Ct. 475; Diamond Match Co. v. Ontonagon, 188 U. S. 82, 47 L. Ed. 394, 23 Sup. Ct. Rep. 266; General Oil Co. v. Crain, 209 U. S. 211, 52 L. Ed. 754; 28 Sup. Ct. Rep. 475; Bacon v. Illinois, 227 U. S. 504, 57 L. Ed. 615, 33 Sup. Ct. Rep. 299; Champlain Realty Co. v. Brattleboro, 260 U. S. 366, 67 L. Ed. 309, 43

Sup. Ct. Rep. 146, 25 A. L. R. 1195; Rees-Scott Co. v. City of New Orleans, 124 La. 155, 49 So. 1012.

It is not possible to distinguish this case from General Oil Co. v. Crain, supra, in the application of the law to the facts of the case. The General Oil Company was a Tennessee Corporation, having its principal place of business in Memphis, and engaged in the business of manufacturing illuminating oils and selling them in other states into which they were shipped. The company's wells and refining plants were in Pennsylvania and Ohio, from which the oils were shipped into the states in which they were sold and used. On account of the tendency of the oils to leak and evaporate and to burst the containers in changes of temperature, it was necessary to ship the oils in railroad tank cars, to the several distributing points throughout the United States, at which the oil was put into barrels or other containers suitable in size for filling orders, which varied in amounts from one barrel upward. It was impracticable to maintain an equipment for the reception and distribution of the oil at every such point at which orders were filled. Memphis was one of such distributing points, to which the oils were shipped from Pennsylvania and Ohio in tank cars, and at which the oils were unloaded into tanks and put into barrels and other smaller vessels and forwarded to the company's customers in Arkansas, Louisiana, [fol. 32] and Mississippi, in which states the company had many regular customers, from whom it always had on hand unfilled orders for oil, to be delivered as soon as possible or convenient. The company conducted also a local business, selling and delivering oil to customers in Memphis, and maintained large tanks, of various sizes, for the several kinds of oils, to be put into barrels or other smaller vessels, to be sold locally or to fill the orders already received from the customers in Arkansas, Louisiana, and Mississippi. For many years, the company unloaded its oil from its tank cars into the large stationary tanks without attempting to segregate the oil which was sold or intended to be sold locally from that which was to be forwarded to the customers in Arkansas, Louisiana, and Mississippi; and the company paid an inspection fee or tax of 25 cents per barrel, levied by a statute of Tennessee, on all of the oils in the company's stationary tanks in Memphis, whether the oil was intended

for sale in Tennessee or in the other states mentioned. Being advised that the oil destined to be shipped and sold outside of the State of Tennessee would not be subject to the local inspection tax if kept separate from the oil sold or intended to be sold in Tennessee, the company inaugurated and maintained a system of segregating the oil that was to be shipped to the customers in Arkansas, Louisiana, and Mississippi, from that which was sold or intended to be sold in Tennessee. A stationary tank, marked plainly and conspicuously "Oil Already Sold in Arkansas, Louisiana, and Mississippi," was maintained, in which alone was kept the oil for which orders had been received from the customers in those states before the oil was shipped from the plants in Pennsylvania and Ohio especially to fill such orders. That oil was unloaded from the tank cars at Memphis into the stationary tank only for the purpose of putting it into the smaller vessels to meet the requirements of the orders which had been received from the customers in Arkansas, Louisiana, and Mississippi, before the oil was shipped from Pennsylvania or Ohio, and was kept separately, in the [fol. 33] tank marked "Oil Already Sold in Arkansas, Louisiana, and Mississippi," until put into the smaller vessels and forwarded to the customers in those states. Another stationary tank, marked plainly and conspicuously "Oil to be Sold in Arkansas, Louisiana, and Mississippi" was maintained, in which the oil to be sold in those states, but for which there were no orders received before the oil was shipped in the tank cars from the company's plants in Pennsylvania and Ohio, was kept separate and apart from all other oil until required for filling orders from the company's customers in those states, and was never sold except on receipt of such orders. Thereafter, the company invoked the commerce clause of the Constitution of the United States, contending that in so far as the inspection fee or tax was sought to be imposed upon the oil in the two tanks marked as we have said it was violative of the 3rd clause of the 8th section of article 1 of the Constitution giving the Congress the exclusive power to regulate commerce among the several states. The defendant filed a demurrer, attacking the jurisdiction of the court on the ground that the suit was one against the state, or against an officer acting by authority of the state. The chancery court overruled

the demurrer in so far as the oil in the tank marked "Oil Already Sold in Arkansas, Louisiana, and Mississippi" was concerned, and sustained it in so far as the oil in the tank marked "Oil to be Sold in Arkansas, Louisiana, and Mississippi" was concerned. On appeal, the supreme court of Tennessee decided that the suit was one against the state, and reversed the decree of the chancery court. The plaintiff sued out a writ of error, and the Supreme Court of the United States affirmed the judgment on the ground that "no constitutional right of the oil company was violated by the enforcement of the law" levying the tax. In the course of the opinion, Mr. Justice McKenna, for the court, after reviewing many like cases, including Coe v. Errol, supra, and Diamond Match Co. v. Ontonagon, supra, said:

[fol. 34] "Like comment is applicable to plaintiff in error and its oil. The company was doing business in the state, and its property was receiving the protection of the state. Its oil was not in movement through the state. It had reached the destination of its first shipment, and it was held there, not in necessary delay or accommodation to the means of transportation, as in State, Detnold, Prosecutor, v. Engle, supra, but for the business purposes and profit of the company. It was only there for distribution, it is said, to fulfill orders already received. But to do this required that the property be given a locality in the state beyond a mere halting in its transportation. It required storage there,—the maintenance of the means of storage; of putting it in and taking it from storage. The bill takes pains to allege this. 'Complainant shows that it is impossible, in the coal oil business, such as complainant carries on, to fill separately each of these small orders directly from the railroad tank cars, because of the great delay and expense in the way of freight charges incident to such a plan, and for the further reason that an extensive plant and apparatus is necessary in order to properly and conveniently unload and receive the oil from said tank cars, and it would be impracticable, if not impossible, to have such apparatus and machinery at every point to which complainant ships said oil.'

"This certainly describes a business,—describes a purpose for which the oil is taken from transportation, brought to rest in the state, and for which the protection of the

state is necessary,—a purpose outside of the mere transportation of the oil. The case, therefore, comes under the principle announced in American Steel & Wire Co. v. Speed, 192 U. S. 500, 48 L. Ed. 538, 24 Sup. Ct. Rep. 365.

"We have considered this case so far in view of the cases which involve the power of taxation. It may be that such power is more limited than the power to enact inspection laws. The difference, if any exists, is not necessary to observe. The cases based on the taxing power show the contentions of plaintiff in error are without merit; in other words, show that its oil was not property in interstate commerce."

The court considered and rejected, in the case just cited, every contention made in the argument of the oil company in the present case, to the effect that the unloading and storing of the oil in the stationary tanks was merely a necessary incident of the business and an unavoidable delay in the transportation of the oil beyond the state.

As to the method of assessing and taxing movable property that is temporarily halted and at rest, between its transportation within and its exportation from the state, it was said in Coe v. Errol, supra:

"But, granting all this, it may still be pertinently asked: How can property thus situated, to-wit: deposited or stored at the place of entrepot for future exportation, be taxed in [fol. 35] the regular way as part of the property of the state? The answer is plain. It can be taxed as all other property is taxed, in the place where it is found, if taxed or assessed for taxation in the usual manner in which such property is taxed, and not singled out to be assessed by itself in an unusual and exceptional manner because of its destination. If thus taxed, in the usual way that other similar property is taxed, and at the same rate and subject to like conditions and regulations, the tax is valid. In other words, the right to tax the property being founded on the hypothesis that it is still a part of the general mass of property in the state, it must be treated in all respects as other property of the same kind is treated.

"These conditions we understand to have been complied with in the present case. At all events there is no evidence to show that the taxes were not imposed in the regular and

ordinary way. As the presumption, so far as mode and manner are concerned, is always in favor of, and not against, official acts, the want of evidence to the *country* must be regarded as evidence in favor of the regularity of the assessment in this case."

The oil company, as appellee in this case, relies mainly upon the definitions given in cases involving, not the question of the right of a state to tax property claimed to be moving in interstate or foreign commerce, but the question as to whether the commerce itself—when claimed to be interstate or foreign commerce—is subject to state regulation or subject to Federal regulation. We refer particularly to Swift & Co. v. United States, 196 U. S. 375, 49 L. Ed. 518; Texas & New Orleans Railroad Co. v. Sabine Tram Co., 227 U. S. 111, 57 L. Ed. 442; and Railroad Commission of Louisiana v. Texas & Pacific Railway Co., 229 U. S. 336, 57 L. Ed. 1215. The Supreme Court of the United States, in defining "exports" and in determining when a shipment is in interstate or foreign commerce, has recognized or at least has intimated that the limitation on the power of the states to tax property when halted in an interstate or foreign shipment is not so strict as is the prohibition against any interference with the exclusive power of the Congress to regulate the interstate and foreign commerce itself. For example, in Swift & Co. v. United States, 196 U. S. 400, 49 L. Ed. 526, it is said:

"But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible necessarily is beyond the scope of interference by Congress in cases where such interference is deemed neces-
[fols. 36-41] sary for the protection of commerce among the states. Nor do we mean to intimate that the statute under consideration is limited to that point. Beyond what we have said above, we leave those questions where we find them. They were touched upon in Northern Securities Co. v. United States, 193 U. S. 197, 48 L. Ed. 679, 24 Sup. Ct. Rep. 436."

Accordingly, if the state were attempting, in this instance, to regulate, or to impose a burden, such as a license tax, upon the business itself which is being conducted by the Carson Petroleum Company, or by the Petroleum Im-

port & Export Corporation, at St. Rose, the case would present a different question—to which the rulings cited by counsel for the Carson Petroleum Company would be appropo.

According to the rulings in Coe v. Errol, Diamond Match Co. v. Ontonagon, General Oil Co. v. Crain, and Bacon v. Illinois, supra, as distinguished from and approved in Champlain Realty Co. v. Brattleboro, supra, the judgment appealed from must be reversed, and the demand of the plaintiff rejected and its suit dismissed.

The tax collector claims his attorney's fee of 10 per cent upon the aggregate amount of the taxes and penalties to be collected, for defending this suit in which the tax collector is sought to be restrained from collecting the tax. The claim is well founded. Act 170 of 1898, sec. 56, p. 373; Globe Lumber Co. v. Clement, 110 La. 438, 34 So. 595.

The judgment appealed from is annulled; the writ of injunction which was issued herein is dissolved; the plaintiff's demand is rejected and its suit is dismissed at its cost; and it is ordered, adjudged and decreed that the tax collector shall collect from the plaintiff, Carson Petroleum Company, as part of the costs hereof, the tax collector's attorney's fee of ten per cent. on the aggregate amount of the taxes which he was sought to be restrained from collecting, and the penalties imposed by law.

[fols. 42-45] IN SUPREME COURT OF LOUISIANA

[Title omitted]

ORDER DENYING REHEARING—June 4, 1928

By the Court:

It is ordered that the rehearing applied for in this case be refused.

[fol. 46] Petition for Writ of Error—Original

IN SUPREME COURT OF LOUISIANA

No. 28543

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA AND FOR SUPERSEDEAS—Filed June 28, 1928.

To the Honorable Charles A. O'Neill, Chief Justice Supreme Court of the State of Louisiana:

And now comes the Carson Petroleum Company, a Delaware corporation, plaintiff and appellee herein, and respectfully represents:

I

That on or about the tenth day of May, 1924, an action was commenced in the Twenty-Fourth Judicial District Court, Parish of St. Charles, State of Louisiana, by the Carson Petroleum Company against Leon C. Vial, Sheriff and Tax Collector of the Parish of St. Charles, and R. A. DeBroca, Assessor for the Parish of St. Charles, and the Louisiana Tax Commission to restrain them and each of them from laying and levying against the plaintiff an assessment upon merchandise oil, and restraining and prohibiting the said Leon C. Vial, Sheriff and Tax Collector for the Parish of St. Charles from advertising, seizing and attempting to sell plaintiff's property in his effort to collect said illegal tax in the amount of $3,885.05.

II

That the said tax purported to be assessed pursuant to the laws of the State of Louisiana in force at the time of said assessment.

[fol. 47]

III

That on or about June 17th, 1924 a preliminary injunction issued herein out of said Twenty-fourth Judicial District Court for the Parish of St. Charles, and the plaintiff thereupon filed its bond in the sum of $6,000.00.

IV

That the defendants thereafter filed answer to the said petition in which, among other things, the said defendants charged that the establishment of the plaintiff company at St. Rose, in the Parish of St. Charles, is a storage place, or entrepot, where oils are collected for the convenience and profit of said plaintiff, and that the oil herein assessed is oil held in storage at said plant.

V

That thereafter the said case proceeded to trial on the merits before the Honorable L. Robert Rivarde, one of the judges of the Twenty-Fourth Judicial District Court for the Parish of St. Charles, and on the eighteenth day of January, 1927 a judgment was entered in said cause in part as follows:

"In this case the law and the evidence being so clearly in favor of the plaintiff and against the defendants:

"It is ordered, adjudged and decreed that the assessment and taxes levied and sought to be collected by the defendants herein, be and the same is hereby declared to be illegal null and void, and

"It is further ordered, adjudged and decreed, that the preliminary injunction heretofore issued in this case on the 16th day of June 1924 be and the same is hereby made perpetual and accordingly the Tax Assessor of the Parish of St. Charles, and the Louisiana Tax Commission of the State of Louisiana, and the Sheriff of the Parish of St. Charles, be and they are hereby prohibited, restrained and enjoined from levying any tax upon the property of Plaintiff or from advertising, seizing, selling or attempting to sell any of the property belonging to the Plaintiff herein."

VI

That thereafter and on February 5th, 1927 an appeal was allowed to this Court by the Honorable L. Robert Rivarde, and this Court entered, on May 7th, 1928 a decree by which the judgment appealed from was annulled; writ of injunction which was issued herein was dissolved; the plaintiff's

demand was rejected and suit was dismissed at its cost; and it was ordered, adjudged and decreed that the Tax Collector shall collect from the plaintiff, Carson Petroleum [fol. 48] Company, and as part of the costs hereof, the Tax Collector's attorney's fee and ten per cent on the aggregate amount of the taxes which he was sought to be restrained from collecting and the penalties imposed by law.

VII

That thereafter and on May 21st, 1928 a petition for rehearing was filed in this Court, together with a brief in support thereof by the plaintiff, and on June 4th, 1928 the said petition for rehearing was denied without reasons.

VIII

The claim of the plaintiff and appellee is that the taxes so levied and taxed are in violation of and repugnant to Article 1, Section 8, Clause 3 of the Constitution of the United States of America which provides as follows:

"The Congress shall have power * * * to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

And in that such tax burdens and interferes with foreign commerce and is in violation of and repugnant to Article 1, Section 9, Clause 5 of the Constitution of the United States of America which provides:

"No Tax or Duty shall be laid on Articles exported from any State."

And in that such tax burdens and interferes with foreign commerce and is in violation of and repugnant to that part of Article 1, Section 10, Clause 2 of the Constitution of the United States of America which provides:

"No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: * * *"

The decree complained of violates the rule announced by the Supreme Court of the United States in Coe vs. Errol, 116 U. S. 517 where that Court, in determining when personal property wasn't taxable by the State, said——

"that such goods do not cease to be a part of the general mass of property in the state, subject, as such, to its jurisdiction, and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation, to another state, or have been started upon such transportation in a continuous route or journey."

Further, the decree complained of violates the purport of the decision of the Supreme Court of the United States in Champlain Realty Company against Town of Brattleboro, 260 U. S. 366, in which the Court, in holding that certain logs were not taxable by the State, said:

"The boom at the mouth of the West River did not constitute an entrepot or depot for the gathering of logs pre-[fol. 49] paratory for the final journey. It was only a safety appliance in the course of the journey. It was a harbor of refuge from danger to a shipment on its way. It was not used by the owner for any beneficial purpose of his own except to facilitate the safe delivery of the wood at Hinsdale on their final journey already begun. The logs were not detained to be classified, measured, counted, or in any way dealt with by the owner for his benefit, except to save them from destruction in the course of their journey that, but for natural causes, over which he could exercise no control, would have been actually continuous."

Further, the decree complained of violates the principal announced by the Supreme Court of the United States in Hughes Bros. Timber Company vs. Minnesota, 272 U. S. 469 in which the Court, in holding that certain pulp wood was not taxable by the State, said:

"The change in the method of transportation by floating to carriage on a vessel did not affect the continuity of the interstate passage, if such a passage was intended by the parties and had begun, any more than did shipment by local railroad bills of lading from a point in a state to a port of

the same state, for shipment by vessel to a foreign port, prevent its being interstate or foreign commerce."

IX

The specific question presented is whether the continuity of the interstate and foreign transportation of the merchandise oil from the Mid-Continent fields in Arkansas, Oklahoma and Texas to the European destination is so affected as to make the merchandise oil taxable in the State of Louisiana by the stoppage at the harbor of St. Rose where the oil is removed from tank cars to stationary tanks and thence to steamer in view of the fact that no other method of change from land to water transportation is provided and, in view of the further fact, that the plaintiff and its subsidiary conduct no business of any kind at St. Rose except to effect the change in the method of transportation from land to water.

X

The plaintiff contends that the Supreme Court of the State of Louisiana, by its decree entered May 7th, 1928, has disregarded and refused to follow the fundamental principles announced by the Supreme Court of the United States; and that the tax levied is in violation of Article 1, Section 8, Clause 3; Article 1, Section 9, Clause 5, and Article 1, Section 10, Clause 2 of the Constitution of the United States of America.

Wherefore petitioner further avers that in the aforesaid judgment and proceedings certain errors were committed to the prejudice of petitioner, all of which will more fully appear from the assignment of errors which is filed herewith:

Wherefore petitioner prays that an appeal be allowed from the Supreme Court of the State of Louisiana to the Supreme Court of the United States of America for the correction of the errors complained of, and that a transcript [fol. 50] of the record, proceedings and papers in this cause, together with this petition and assignment of errors, duly authenticated by the Clerk of the Supreme Court of the State of Louisiana, may be sent to the Supreme Court of the United States as directed by law.

Petitioner further prays for citation and that an order of supersedeas be entered herein pending the final decision in this cause, and that the amount of security may be fixed by the order allowing the said appeal.

And, as in duty bound, petitioner will ever pray.

Harold A. Moise, John K. Murphy, Geo. M. Burditt, Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 51] IN SUPREME COURT OF LOUISIANA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 28, 1928

And now comes Carson Petroleum Company, petitioner and plaintiff in error, by its undersigned counsel, and in connection with its petition for a writ of error, shows that in the record of proceedings and in the rendering of the judgment and decision of the Supreme Court of the State of Louisiana in the above entitled cause, manifest error has intervened to the prejudice of petitioner and plaintiff in error in this, to-wit:

I

The Court erred in annulling the judgment herein obtained by plaintiff and appellee from the Twenty-Fourth Judicial District Court for the Parish of St. Charles, State of Louisiana, wherein it was ordered, adjudged and decreed that the assessment and taxes levied and sought to be collected by defendants herein were declared to be illegal, null and void. And where it was further ordered, adjudged and decreed that the tax assessor of the Parish of St. Charles and the Louisiana Tax Commission of the State of Louisiana and the Sheriff of the Parish of St. Charles be and they are hereby prohibited, restrained and enjoined from levying any tax upon the property of plaintiff or from advertising, seizing, selling or attempting to sell any of the property belonging to the plaintiff herein.

II

The Court erred in annulling and dissolving the permanent writ of injunction obtained by the plaintiff and appellee in the Twenty-Fourth Judicial District Court for the [fol. 52] Parish of St. Charles, State of Louisiana, restraining the Tax Assessor of the Parish of St. Charles and the Louisiana Tax Commission of the State of Louisiana and the Sheriff of the Parish of St. Charles from levying any tax upon the property of plaintiff, or from advertising, seizing, selling or attempting to sell any of the property belonging to the plaintiff herein.

III

The Court erred in ordering, adjudging and decreeing that the Tax Collector for the Parish of St. Charles collect from the plaintiff and appellee, Carson Petroleum Company, the aggregate amount of taxes which said Tax Collector was restrained from collecting, together with the Tax Collector's attorneys fee of ten per cent of the aggregate amount of such taxes, and together with costs of suit.

IV

The Court erred in deciding and finding that the merchandise oil, which had been assessed by the Tax Collector for the Parish of St. Charles, was subject to a tax under the laws of the State of Louisiana.

V

The Court erred in not finding and deciding that the said merchandise oil was not subject to tax under said statute.

VI

The Court erred in finding and deciding that the merchandise oil assessed by the Tax Collector for the Parish of St. Charles was not in transit in foreign commerce.

VII

The Court erred in not finding and deciding that the merchandise oil taxed by the Assessor for the Parish of St.

Charles was property in transit in foreign commerce and as such not subject to tax under the laws of the State of Louisiana.

VIII

The Court erred in finding and deciding that the merchandise oil assessed by the Assessor for the Parish of St. Charles was not exempt from said taxation under and pursuant to the provisions of Article 1, Section 8, Clause 3, Article 1, Section 9, Clause 5, and Article 1, Section 10, Clause 2 of the Constitution of the United States of America.

IX

The Court erred in not finding and deciding that the merchandise oil assessed by the Assessor of the Parish of St. Charles was exempt from taxation under and pursuant to the said provisions of the Constitution of the United States of America.

[fol. 53]

X

The Court erred in misapprehending and misconstruing the decisions of the United States Supreme Court in the case of Coe vs. Errol, 116 U. S. 517; Champlain Realty Co. vs. Brattleboro, 260 U. S. 366; Hughes Bros. Timber Company vs. Minnesota, 272 U. S. 469.

XI

The Court erred in finding and deciding that it is not possible to distinguish this case from General Oil Company vs. Crane, 209 U. S. 211, in that, in the instant case, the plaintiff did not conduct any business of any kind, did not make any grading, distribution or segregation of merchandise oil, and did not make any sales either domestic or foreign at the Port of St. Rose, all of the merchandise oil shipped through said port having been purchased by the plaintiff from its Chicago and New York offices in the Mid-Continent Fields to fill orders already having been taken from European consumers, whereas in the General Oil Company case, the Oil Company, as is pointed out by Mr. Chief Justice Taft in Champlain Realty Company against Brattleboro, 260 U. S. 366—

"had its principal place of business in Memphis, Tennessee, for the manufacture and sale of illuminating oils in interstate commerce. It imported oil from other states and put it into a tank, appropriately marked for distribution in smaller vessels to fill orders for oil already sold in Arkansas, Louisiana and Mississippi. The Court held that the first shipment had ended; that its storage at Memphis for division and distribution to various points was for the business purposes and profits of the company. The Court continued:

" 'It was only there for distribution, it is said to fulfill orders already received. But to do this required that the property be given a locality in the state beyond a mere halting in its transportation' (p. 231). The tank at Memphis thus became a depot in its oil business for preparing the oil for another interstate journey."

By reason whereof petitioner and plaintiff in error prays that said judgment of the Supreme Court of the State of Louisiana should be reversed and that judgment be rendered in favor of petitioner and plaintiff in error.

Carson Petroleum Company, by Harold A. Moise, John K. Murphy, Geo. M. Burditt, Attorneys.

[File endorsement omitted.]

[fol. 54] ORDER GRANTING WRIT OF ERROR

No. 28543

IN SUPREME COURT OF LOUISIANA

[Title omitted]

ORDER ALLOWING APPEAL—Filed June 28, 1928

On reading of the petition of Carson Petroleum Company for an order allowing appeal and the assignment of errors, and upon due consideration of the record in this cause:

It is ordered that an appeal with supersedeas be allowed from the Supreme Court of the United States to the Su-

preme Court of the State of Louisiana, as prayed for in said petition, and that said appeal and citation thereon, be issued, served, and returned to the Supreme Court of the United States, in accordance with law, upon the condition that the said petitioner and plaintiff in error, Carson Petroleum Company, do give security in the sum of Seventy-five hundred Dollars ($7,500.00); that the said plaintiff in error shall prosecute the said appeal to effect, and, if plaintiff in error fails to make good its plea, shall answer to defendant in error for all costs and damages that may be adjudged and decreed on account of said appeal, the said bond to be approved by me.

In witness whereof, I have hereto set my hand this 28th day of June, 1928.

Charles H. O'Neill, Chief Justice of the Supreme Court of the State of Louisiana. (Seal, Supreme Court of the State of Louisiana.

[File endorsement omitted.]

[fols. 55 & 56] Bond on writ of error for $7,500.00, approved and filed June 28, 1928, omitted in printing.

[fol. 57] IN SUPREME COURT OF LOUISIANA

WRIT OF ERROR, SHOWING ACCEPTANCE OF SERVICE AND WAIVER OF CITATIONS BY COUNSEL FOR DEFENDANTS IN ERROR—Filed June 30, 1928

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana, before you, or some of you, being the highest court of law or equity of the

said State in which a decision could be had in the said suit between Carson Petroleum Company against Leon C. Vail, Sheriff and Tax Collector of the Parish of St. Charles; R. A. De Broca, Assessor for the Parish of St. Charles, and The Louisiana Tax Commission, bearing the No. 28543 upon the docket of the said Supreme Court of the State of Louisiana, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, [fols. 58-60] or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Carson Petroleum Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, the 28 day

of June, in the year of our Lord one thousand nine hundred and twenty-eight.

H. J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana. (Seal.)

Allowed by Charles A. O'Niell, Chief Justice Supreme Court Louisiana. (Seal.)

[File endorsement omitted.]

Acceptance of Service

Service accepted. Issuance of writ of error and citation waived.

Harry P. Sneed, Attorney for Leon C. Vial, Sheriff and Tax Collector for the Parish of St. Charles; R. A. De Broca, Assessor for the Parish of St. Charles; Louisiana Tax Commission.

[fol. 61] Return to Writ of Error omitted in printing.

[fol. 62] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation of Parts of Record to be Printed—Filed July 25, 1928

The plaintiff in error will rely upon the following points:

Point I

The levying of an assessment by the taxing authorities of the State of Louisiana on merchandise oil in actual transit from the Mid-Continent fields in Arkansas, Oklahoma and Texas to European destination is in violation of the provisions of:

Article 1, Section 8, Clause 3;

Article 1, Section 9, Clause 5; and

Article 1, Section 10, Clause 2 of the Constitution of the United States of America.

Point II

The transfer of merchandise oil from railroad tank cars to tank steamers through the medium of stationary tanks constructed by a subsidiary of the plaintiff in error at the harbor of St. Rose, Louisiana, was not an interruption of the continuity of the interstate and foreg-ing shipment.

Point III

Merchandise oil in process of transfer from railroad to water transportation at the harbor of St. Rose, Louisiana, is not subject to taxation by the State of Louisiana.

Point IV

The decree of the Supreme Court of the State of Louisiana vacating the injunction issued against the defendants and reversing the decree in favor of the plaintiff by the Trial Court should be reversed and a decree entered in favor of the plaintiff.

The plaintiff in error hereby designates the following parts of the record as necessary for the consideration of the foregoing points:

1. The petition of Carson Petroleum Company for a writ of injunction filed in the Twenty-fourth Judicial District Court for the Parish of St. Charles, May 10, 1924.

[fol. 63] 2. The injunction order entered in the Twenty-fourth Judicial District Court for the Parish of St. Charles, June 17, 1924.

3. The answer of Leon C. Vial, Sheriff and Tax Collector for the Parish of St. Charles, State of Louisiana, R. A. De Broca, the Assessor for the Parish, and the Louisiana Tax Commission, filed in the Twenty-fourth Judicial District Court for the Parish of St. Charles, December 7th, 1926.

4. The testimony and notes of evidence filed in the Twenty-fourth Judicial District Court for the Parish of St. Charles, January 18, 1927.

5. The portion of the assessment roll for the Parish of St. Charles showing the assessment against the Carson Petroleum Company filed in the Twenty-fourth Judicial

District Court for the Parish of St. Charles, January 18, 1927.

6. The judgment entered in the Twenty-fourth Judicial District Court for the Parish of St. Charles, January 18, 1927.

7. The certificate of the Clerk of the Twenty-fourth Judicial District Court dated March 18, 1928.

8. The opinion and decree filed and entered by the Supreme Court of Louisiana May 7, 1928.

9. The order entered by the Supreme Court of Louisiana June 4, 1928 denying the motion of plaintiff for a rehearing.

10. The petition of Carson Petroleum Company filed in the Supreme Court of Louisiana June 28, 1928 for the allowance of an appeal to the Supreme Court of the United States of America.

11. The assignment of error filed with said petition.

12. The order of Chief Justice John A. O'Neill allowing an appeal to the Supreme Court of the United States of America.

13. The bond filed by Carson Petroleum Company in the Supreme Court of Louisiana, June 28, 1928.

14. The waiver of service of citation filed by the defendants in error June —, 1928.

15. The certificate of the Clerk of the Supreme Court of Louisiana dated the — day of July, 1928.

William E. Leahy, Harold A. Morse, John K. Murphy, Geo. M. Bendett, Attorneys for Plaintiff in Error.

Service of a copy of the foregoing statement of points and designation of parts of the record is admitted this 30 [fol. 64] day of June, 1928, and we do hereby expressly waive the right to designate any further parts of the record to be printed.

Harry P. Sneed, Attorney for Defendants in Error.

[fols. 65 & 66] [File endorsement omitted.]

Endorsed on cover: File No. 33,615. Louisiana Supreme Court. Term No. 306. Carson Petroleum Company, plaintiff in error and appellant, vs. Leon C. Vial, sheriff and tax collector of the Parish of St. Charles; R. A. De Broca, assessor for the Parish of St. Charles, et al. Filed July 25th, 1928. File No. 33,615.

(3317)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 26, 1928

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4820)